

REMARKS

In an office action dated October 7, 2002, the Examiner rejected claims 23-38 and allowed claims 6, 7, 10, 11 and 39. To expedite the allowance of claims 6, 7, 10, 11 and 39, Applicant cancelled claims 23 - 38 in the previous prosecution. Applicant now respectfully requests continuing examination of claims 23-38 (renumbered as claims 39 - 52). In addition, Applicant has added new claims 53 - 63.

Claims 39 - 52 have been amended to renumber, to correct errors in Markush group claim language and to clarify antecedent basis issues. No new matter has been added.

In an office action dated October 7, 2002, the Examiner rejected claims 23-25 and 27-37 under 35 U.S.C. 103(a) as being unpatentable over Morrison et al. in view of Gerber et al. The Examiner stated that Morrison et al. discloses a test tube assembly rack having a rack to support a plurality of tubes, a side and top opening, a top shelf and lower shelf (Fig. 2), a handle area, and support holes are designed such that they are capable of supporting any of the tubes or needles associated with the spinal procedure; however it does not disclose an actual needle set associated with the rack. Further, the Examiner stated that Gerber discloses a spinal fluid collection system disclosing a plurality of CSF tubes and a spinal tap assembly (10) in an analogous art for the purpose of taking a spinal sample and holding the tubes. The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Morrison et al. as shown by Gerber et al. because the application to a spinal procedure would give the device greater functionality.

Applicant respectfully disagrees. Morrison discloses a test tube rack where the test tube rack is pivotally connected to a stationary base so that the test tube rack can be placed at an angle, for the purpose of maximizing the surface area of fluid (culture media) inside the test tubes and increasing the exposure of the culture medium to air. In this way, when the test tube is shaken, a larger undulating surface area is created and a greater volume of culture medium is brought to the surfaced to directly react with air at the top of the test tube (see Morrison, column 1, lines 18-26).

The test tube rack of Gerber does not have open sides. Gerber teaches away from open sides, because Gerber discloses a closed test tube rack to minimize exposure to bodily fluids or needle sticks (see Gerber, column 2, lines 13-16).

M.P.E.P §2141.01 states that, in order to apply 35 U.S.C. 103(a), the following tenets of patent law must apply: (A) the claimed invention must be considered as a whole; (B) the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; and (D) a reasonable expectation of success is the standard with which obviousness is determined.

The test tube rack of the instant invention does not contain a pivot, as disclosed by Morrison. Morrison teaches away from a test tube rack without a pivot, as the pivot allows the test tube rack to hold test tubes at an angle and increase the surface area of growth media inside the test tubes (see Morrison, entire disclosure). In addition, Morrison teaches away from the use of CSF tubes which have screw-on caps. One purpose of the invention disclosed in Morrison is to increase the exposure of the contents of the test tube to air. A capped test tube eliminates the flow of air across the surface of the contents of the test tube. The capped tube is important in the instant invention to allow the user to close and safely transport the CSF tubes to a laboratory or other location.

The Examiner stated that the combination of the Morrison invention in view of Gerber would be obvious because it would lend greater functionality. Applicant respectfully disagrees.

Gerber teaches a closed test tube rack for the purpose of reducing needle sticks and exposure to bodily fluids, and therefore cannot be open-sided. The Gerber reference does not suggest the desirability of an open test tube rack and in fact the Gerber reference teaches away from an open-sided test tube rack. Morrison teaches an open test tube rack with a pivot, for the purpose of increasing air flow around the contents of the test tubes.

The Morrison invention does not suggest the desirability of an open test tube rack without a pivot and in fact the Morrison reference teaches away from a test tube rack without a pivot. There is no motivation to combine these two references, as they teach away from each other. Instead of lending greater functionality, the proposed modifications would render the prior art inventions being modified unsatisfactorily for their intended purposes (M.P.E.P. §2143.01 p 2100-127).

Applicant respectfully submits that the Examiner has not produced a *prima facie* case of obviousness by the combination of the Gerber and Morrison references and therefore Applicant respectfully requests withdrawal of this rejection.

The Examiner rejected claim 26 under 35 U.S.C. 103(a) as being unpatentable over Morrison et al. and Gerber et al. as applied to claims above, and further in view of Stockdale et al. The Examiner stated that Morrison et al. and Gerber et al. disclose the limitations above but do not disclose indentations. As discussed above, the combined disclosures of Morrison et al. and Gerber et al. do not render the instant invention obvious under 35 U.S.C. 103(a). Therefore, the addition of the disclosure of Stockdale does not render claim 26 unpatentable under 35 U.S.C. 103(a). Applicant respectfully requests withdrawal of this rejection.

The Examiner further rejected claim 38 under 35 U.S.C. 103(A) as being unpatentable over Morrison et al. and Gerber et al. as applied to claims 23-25, 37-37 and further in view of Berry. The Examiner stated that Morrison et al. and Gerber et al. disclose the limitations above but does not disclose the use of an internally sterile package to seal the holder and the CSF tubes. As discussed above, the combined disclosures of Morrison et al. and Gerber et al. do not render the instant invention obvious under 35 U.S.C. 103(a). Therefore, the addition of the disclosure of Berry does not render claim 38 unpatentable under 35 U.S.C. 103(a). Applicant respectfully requests withdrawal of this rejection.

For the reasons set forth above, Applicant submits that, upon entry of the requested amendments, the claims of this application are patentable. Reconsideration and withdrawal of the Examiner's rejections are hereby requested. Allowance of the claims of this application at an early date is earnestly solicited.

Finally, 9 sheets of formal drawings are submitted with this REQUEST FOR CONTINUED EXAMINATION. These drawings are submitted in response to the Draftsperson's objection to the originally filed drawings. These CAD-generated drawings are submitted to replace the hand-drawn drawings originally submitted due to the unavailability of the original draftsman.

The Examiner is invited to contact the undersigned by telephone at (480) 268-7418 if it will expedite the prosecution of this case.

Date: July 3, 2004

Respectfully submitted,



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ATTACHMENT TO REQUEST FOR CONTINUED EXAMINATION
Marked up Claims

[23]39. (Amended) An open-sided spinal fluid collection system comprising:

- a) a test tube rack structured and arranged to support a plurality of test tubes;
- b) wherein said test tube rack comprises at least one open side;
- c) wherein said test tube rack further comprises at least one needle aperture structured and arranged to support an element selected from a group [comprising] consisting of [a)] a spinal tap needle, [b)] a stylet, and [c)] a needle sleeve.

[24]40. (Amended) The open-sided spinal fluid collection system of claim [23] 39 wherein the test tube rack comprises [a)] a top shelf comprising a plurality of test tube apertures to support test tubes [b) at least one needle aperture to support an element selected from said group;] and [c)] a bottom shelf.

[25]41. The open-sided spinal fluid collection system of claim [24] 40 wherein said test tube rack further [comprising] comprises two side panels and two open sides.

[26]42. The open-sided spinal fluid collection system of claim [24] 40 wherein the bottom shelf comprises indentations structured and arranged to support test tubes.

[27] 43. (Amended) The open-sided spinal fluid collection system of claim [24] 40 wherein the test tube rack further [comprising] comprises a handle shelf.

[28] 44. (Amended) The open-sided spinal fluid collection system of claim [27] 43 wherein said handle shelf comprises a plurality of test tube apertures to support test tubes and at least one needle aperture to support an element selected from the group consisting of a spinal tap needle, a stylet, and a needle sleeve.

[29] 45. (Amended) The open-sided spinal fluid collection system of claim [24] 39 wherein the test tube rack further [comprising] comprises a handle.

[30] 46. (Amended) The open-sided spinal fluid collection system of claim [24] 39 wherein the test tube rack further [comprising] comprises an inside shelf.

[31] 47. The open-sided spinal fluid collection system of claim [30] 46 wherein said inside shelf comprises a plurality of test tube apertures to support test tubes and at least one needle holder to support an element selected from said group.

[32] 48. (Amended) The open-sided spinal fluid collection system of claim [24] 39 wherein the test tube rack comprises [comprising] three test tube apertures to support three test tubes.

[33] 49. (Amended) The open-sided spinal fluid collection system of claim [24] 39 wherein the test tube rack comprises [comprising] four test tube apertures to support four test tubes.

[34] 50. (Amended) The open-sided spinal fluid collection system of claim [24] 39 wherein the test tube rack comprises [comprising] two needle apertures to support two elements selected from said group.

[35] 51. The open-sided spinal fluid collection system of claim [24] 39 further comprising a spinal needle and at least one CSF tube.

[36] 52. (Amended) A spinal fluid collection system comprising [a) a test tube rack structured and arranged to support a plurality of test tubes comprising a top shelf and a bottom shelf; b) wherein said test tube rack further comprises two needle apertures; c)] at least one CSF tube and an open-sided test tube rack structured and arranged to support a plurality of test tubes wherein said test tube rack comprises a top shelf, a bottom shelf and two needle apertures, wherein each needle aperture is structured and arranged to support an element selected from the group consisting of a spinal tap needle, a stylet and a needle sleeve.